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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

NORTHWEST ENVIRONMENTAL
DEFENSE CENTER,

Case No. _____

Plaintiff,

COMPLAINT

v.

Federal Clean Water Act
(28 U.S.C. § 1331 and 33 U.S.C. §
1365(a))

CSC, INC., dba MEDFORD
FABRICATION,

Defendant.

INTRODUCTION

1. This is a complaint for injunctive and declaratory relief and civil penalties under the Federal Water Pollution Control Act, commonly known as the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (“CWA” or “Act”). Plaintiff Northwest

Environmental Defense Center (“NEDC”) brings this suit under Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), to abate defendant’s ongoing pollution and the degradation of Bear Creek in Jackson County, Oregon.

2. Defendant CSC, Inc., an Oregon corporation based in Medford, Oregon, owns and operates a metal fabrication facility under the assumed business name of Medford Fabrication.

3. Medford Fabrication generates pollution, including aluminum, copper, iron, zinc, and total suspended solids (“TSS”) among others, which are routinely discharged from its metal fabrication facility via the City of Medford’s storm sewer system into Bear Creek, a tributary of the Rogue River that flows through the City of Medford. Several of these pollutants are regulated as toxic pollutants by the U.S. Environmental Protection Agency, and all of them can be harmful or fatal to fish and other aquatic life.

4. Medford Fabrication is authorized to discharge stormwater associated with industrial activity by a permit issued by the Oregon Department of Environmental Quality (DEQ) pursuant to the Clean Water Act’s national pollutant discharge elimination system. *See* 33 U.S.C. § 1342. That permit imposes various requirements, conditions, and limitations on Medford Fabrication’s industrial activities and its discharge of pollutants to Bear Creek, several of which have been regularly violated by Medford Fabrication since at least January 1, 2019.

5. Medford Fabrication’s Clean Water Act violations are ongoing, and will remain ongoing absent relief from this Court. These violations have and continue to

cause cognizable injury to NEDC and its members, and warrant the imposition of civil penalties and injunctive relief.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). The requested relief is authorized by 33 U.S.C. §§ 1319(d) and 1365(a).

7. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to the claims alleged herein occurred in Medford, Oregon, which is located within this judicial district.

8. As required by the CWA, 33 U.S.C. § 1365(b), by letter dated January 5, 2024, NEDC provided Medford Fabrication with notice of its intent to file suit to abate the violations alleged herein. As required by 40 C.F.R. § 135.2(a)(1), NEDC sent copies of its notice letter to the Administrator of the U.S. Environmental Protection Agency (“EPA”), the Regional Administrator for EPA Region 10, and the Director of the Oregon Department of Environmental Quality (“DEQ”).

9. More than sixty days have passed since NEDC’s notice of intent to sue was given the proper parties, and Medford Fabrication continues to violate its NPDES Permit and the CWA. Neither EPA nor DEQ has commenced or is diligently prosecuting a civil or criminal action to abate the violations alleged in this complaint.

PARTIES

10. Plaintiff NEDC is a membership organization suing on behalf of itself and its members. NEDC is an independent non-profit corporation organized and existing under the laws of the State of Oregon. NEDC maintains its principal place of business in Multnomah County, Oregon. The mission of NEDC is to preserve and protect the natural environment of the Pacific Northwest. Since 1969, the staff, student volunteers, and members of NEDC have advocated for cleaner water and air and for the preservation of public lands and wildlife habitat across the Pacific Northwest.

11. Several of NEDC's members regularly use and enjoy the waters of Bear Creek—the waterbody into which Medford Fabrication discharges pollution—as well as the Rogue River downstream from Medford Fabrication's Facility, and have future plans to continue using these waters for recreational, aesthetic, spiritual, conservation, educational, and other purposes. These members enjoy walking along and recreating on and adjacent to Bear Creek, and enjoy fishing, boating, wading, and hiking along the Rogue River downstream from Medford Fabrication's Facility. These members have observed signs of degraded water quality attributable in part to pollution discharged by Medford Fabrication or have experienced reasonable concern for degraded water quality, and as a result their enjoyment of Bear Creek and the Rogue River has been diminished.

12. Unless the requested relief is granted, Medford Fabrication's Clean Water Act violations will continue unabated and will continue to injure NEDC's and

its members' aesthetic, recreational, and other interests in Bear Creek and the Rogue River, and the aquatic life those waters support.

13. Defendant CSC, Inc. is an Oregon corporation that owns and operates a metal fabrication facility under the assumed business name of Medford Fabrication, and is referred to herein as the same. Medford Fabrication's facility is located at 1109 Court Street, Medford, Oregon (the "Facility").

LEGAL BACKGROUND

14. Congress enacted the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a)(1). To further this goal, Congress instructed the states, subject to EPA oversight, to establish water quality standards applicable to the waters within each state's boundaries. 33 U.S.C. § 1313(c).

15. Section 301(a) of the CWA prohibits the discharge of any pollutant by any person unless the discharge is authorized under one of the Act's permitting programs, which include the national pollutant discharge elimination system ("NPDES") created by section 402 of the Act, 33 U.S.C. § 1342. NPDES permits are the primary means of authorizing, and controlling, so-called "point source" discharges of pollutants.

16. Although EPA is the primary administrator of the CWA, section 402(b) allows EPA to authorize states to administer the NPDES permit program. 33 U.S.C. § 1342(b). Oregon is such an authorized state, and DEQ issues NPDES permits within the State of Oregon under Oregon Administrative Rules ("OAR") Chapter

340, Division 45 and various state and EPA regulations governing NPDES permit issuance.

17. NPDES permits typically include a suite of numeric or narrative technology-based and water quality-based effluent limitations that restrict the rate and quantity of pollutants the permitted facility may discharge. Where the broadly applicable technology-based limitations are not sufficient to protect water quality, NPDES permits must include “any more stringent limitation . . . necessary to meet water quality standards[.]” 33 U.S.C. § 1311(b)(1)(C). NPDES permits may only be issued where they “insure compliance with” applicable state water quality standards. *Id.* § 1342(b)(1)(A); 40 C.F.R. § 122.4(d).

18. Section 505 of the CWA authorizes citizens to bring a civil action against any person, including a municipality, who is alleged to be in violation of an effluent standard or limitation under the CWA. 33 U.S.C. § 1365(a). An effluent standard or limitation includes “a permit or condition thereof issued under” CWA Section 402, i.e., an NPDES permit. *Id.* § 1365(f)(6). This citizen enforcement authority extends to both numeric and narrative permit conditions.

GENERAL FACTUAL ALLEGATIONS

Medford Fabrication’s Facility and its Pollutant Discharges to Bear Creek

19. At the Facility, Medford Fabrication performs fabrication and painting of steel materials, under standard industrial code (SIC) 3444 (Sheet Metal Work).

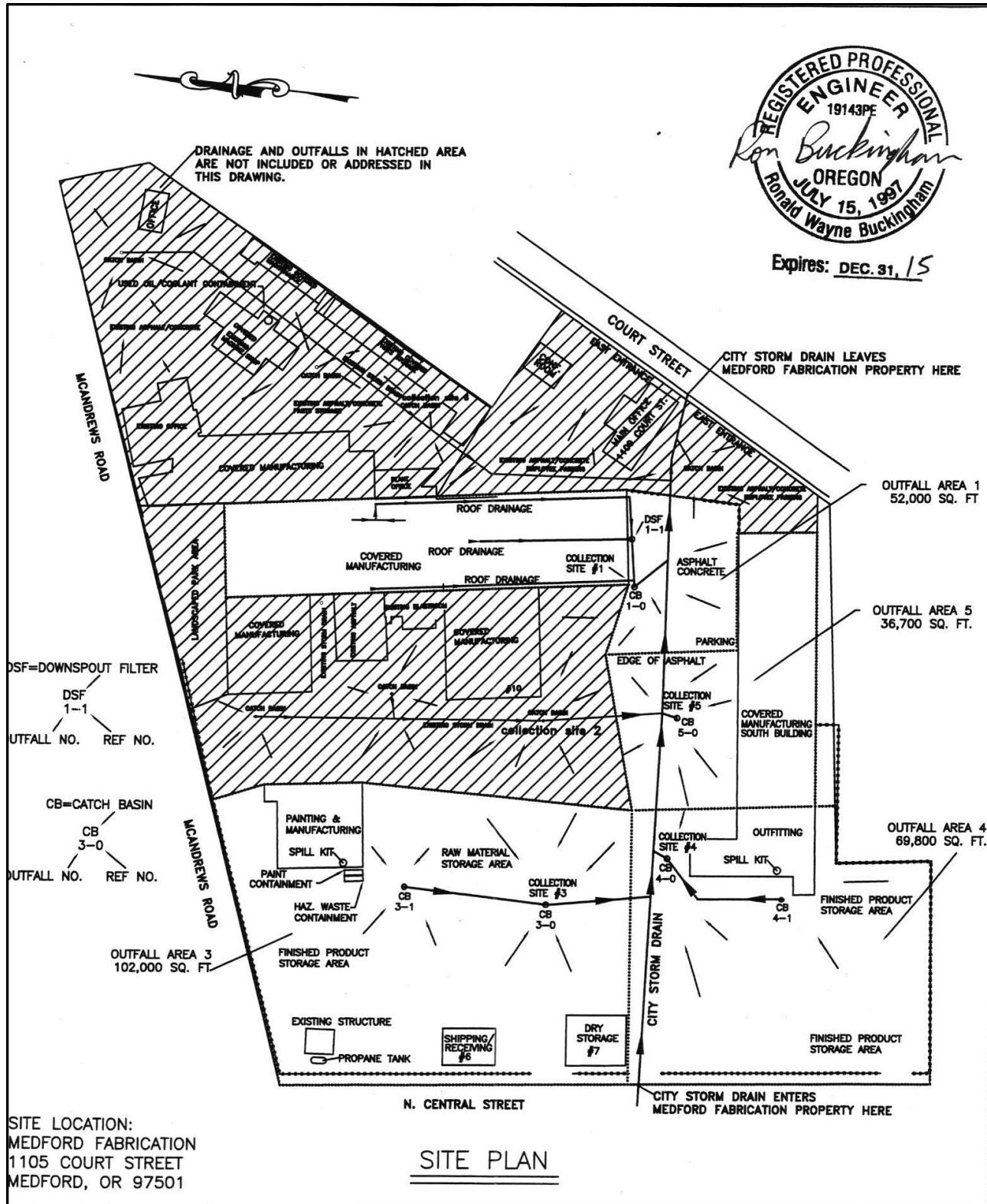
20. The Facility collects and conveys stormwater from several drainage areas, including roof drainage from covered manufacturing areas; a paint

containment area; a raw material storage area; a shipping and receiving area; and a finished product storage area, among others.



*Aerial view of the Medford Fabrication Facility
(photo from <http://medfab.com/index.html>)*

21. The site plan below, taken from Medford Fabrication's Storm Water Pollution Control Plan dated July 28, 2021, depicts the Facility and its various stormwater drainage areas:



22. Among the pollutants found in Medford Fabrication's stormwater are the metals aluminum, copper, iron, and zinc; total suspended solids (TSS); and various forms of nitrogen. Copper and zinc are regulated as toxic pollutants under the Clean Water Act; both pollutants can cause significant reproductive and other harm to fish, including salmon and trout, and can be fatal in sufficient concentrations.

23. TSS and nitrogen can adversely affect aquatic habitats. Excess TSS decreases water clarity and can settle out of the water column to make foraging and spawning more challenging for fish and macroinvertebrates. Nitrogen can fuel the growth of nuisance algae and aquatic weeds which compete for dissolved oxygen in the water and can impair access to spawning and feeding areas on the surface or bed of the river.

24. Stormwater that is collected at the Facility is conveyed into a City of Medford storm drain that runs south to north through or under the Facility. That storm drain then conveys the stormwater a distance of about 1/3 of a mile before discharging into Bear Creek.

25. Bear Creek is a tributary of the Rogue River. It flows approximately 30 miles from its headwaters near Emigrant Lake to its mouth at the Rogue River. Bear Creek supports populations of coho and chinook salmon, winter and summer steelhead, and rainbow and cutthroat trout, among other fish and aquatic species.

26. Bear Creek has a number of water quality impairments, and is currently found on Oregon's list of "impaired waters" under section 303(d) of the

Clean Water Act for temperature and iron—meaning the creek does not meet state water quality standards for those parameters. In 2007 DEQ issued the Bear Creek Watershed Total Maximum Daily Load (“TMDL”), which serves as a clean-up plan and roadmap for addressing excess water temperature, bacteria, and sedimentation in Bear Creek.



*Bear Creek near Medford, Oregon
(photo courtesy of Rogue Riverkeeper)*

27. Bear Creek provides myriad recreational and aesthetic benefits to the public, including several NEDC members who live or recreate in the Bear Creek

watershed. The Bear Creek Greenway is a 20-mile long multi-use trail that runs parallel to Bear Creek, including the point where Medford Fabrication's stormwater pollution reaches the creek. Members of the public, including several of NEDC's members, frequently enjoy walking, biking, and recreating along this section of the creek and greenway.

28. From the point where the city storm drain discharges Medford's Fabrication's polluted stormwater, Bear Creek flows approximately 10 miles north through the cities of Medford and Central Point before entering the Rogue River.

29. The Rogue River flows more than 200 miles from near Crater Lake to the Pacific Ocean, and is one of the original eight rivers protected by the Wild and Scenic Rivers Act of 1968. The Rogue River is home to a diverse variety of aquatic species, and many of its native salmon and steelhead species have been identified as "species of concern" by NOAA Fisheries or as "sensitive species" by the Oregon Department of Fish & Wildlife because of their depressed numbers. Coho salmon have been listed as threatened under the Endangered Species Act, and populations of spring Chinook are in precipitous decline.

30. The Rogue River provides many recreational, aesthetic, and other benefits to the public and certain NEDC members who use and enjoy the river for fishing, boating, wildlife observation and study, among other activities.

Medford Fabrication's NPDES Permit Coverage

31. Medford Fabrication is authorized to discharge stormwater associated with industrial activity from the Facility by DEQ's General Stormwater Discharge

Permit, Permit No. 1200-Z, issued by DEQ with an effective date of July 1, 2021. (hereinafter, the “2021 Permit”).

32. Prior to July 2021, Medford Fabrication was authorized to discharge stormwater associated with industrial activity from the Facility by the prior version of the 1200-Z Permit, which was in effect from August 1, 2017 through June 30, 2021 (hereinafter, the “2017 Permit”).

33. In most respects the substantive provisions of the 2021 Permit are identical to the 2017 Permit. Both Permits authorize the discharge of pollutants only in compliance with terms, conditions, and limitations contained therein. Any violation of a term, condition, or limitation in either permit is a violation of the Clean Water Act.

34. Both the 2017 and 2021 Permits require permit registrants to prepare, implement, and update as needed a Stormwater Pollution Control Plan (“SWPCP”). SWPCPs must provide for adequate pollution controls to eliminate or minimize the exposure of stormwater to pollutants found on site and must establish water quality sampling, reporting, and recordkeeping procedures for the site.

35. Both the 2017 and 2021 Permits establish numeric benchmarks for various pollutants of concern. DEQ uses these benchmarks to assess the effectiveness of a permit registrant’s SWPCP and other pollution control measures. In certain cases, exceedance of a benchmark concentration triggers mandatory corrective actions under the permits.

36. Both the 2017 and 2021 Permits prohibit the discharge of pollutants that cause or contribute to a violation of applicable water quality standards.

**MEDFORD FABRICATION'S VIOLATIONS OF THE
2017 AND 2021 PERMITS AND THE CLEAN WATER ACT**

37. Since at least January 1, 2019, Medford Fabrication has committed numerous violations of both the 2017 and the 2021 Permits and, thus, the Clean Water Act. These violations are particularly described in the accompanying Notice Letter, which is hereby incorporated by reference into this complaint and made a part thereof as if it were restated in its entirety.

38. Each discrete violation of the 2017 and the 2021 Permits alleged below and in the accompanying Notice Letter constitutes a separate and distinct violation of the Clean Water Act, warranting its own relief by this Court.

39. Each discrete violation of the 2017 and the 2021 Permits alleged below and in the accompanying Notice Letter remain ongoing and, absent relief from this Court, is likely to recur in the future.

FIRST CLAIM FOR RELIEF

**Violations of Narrative Technology-Based Effluent Limitations and
Related Control Measures of the Permits (Schedules A.1, A.2, A.3, and E)**

40. The allegations of each preceding paragraph are incorporated herein as if restated in full.

41. Schedule A.1. of the Permits contains a suite of narrative, technology-based effluent limitations that require Medford Fabrication to, *inter alia*, "minimize exposure of manufacturing, processing, [and] material storage areas...to rain, snow,

snowmelt and runoff”; ““to minimize generation of dust and off-site tracking and discharge of soil, particulates and raw, final or waste materials”; and “routinely clean all exposed areas that may contribute pollutants to stormwater[.]”

42. Schedule A.2.a of the 2021 Permit (Schedule A.3.a of the 2017 Permit) requires Medford Fabrication “to select, design, install, implement and maintain control measures . . . to meet the narrative and numeric technology based effluent limits in Schedule A.1 and Schedule E . . . of this permit and [to] describe these measures . . . in the SWPCP.”

43. Schedule A.2.b of the 2021 Permit (Schedule A.3.b of the 2017 Permit) requires Medford Fabrication to “reduce or eliminate pollutants to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practice.”

44. Schedule E.AA.1 of the Permits identifies additional sector-specific requirements that Medford Fabrication must meet, including additional requirements related to good housekeeping measures, spill prevention and response procedures, and spills and leaks.

45. The Permit benchmarks are screening concentrations indicative of “whether site controls are effectively reducing pollutant concentrations in stormwater discharges” as required by Schedules A.1., A.2., A.3. and E.

46. Schedule B.2 of the 2021 Permit establishes the following statewide benchmarks applicable to Medford Fabrication: total copper 0.017 mg/L; total lead

0.039 mg/L; total zinc 0.086 mg/L; pH 5.5-9.0 s.u.; total suspended solids 100 mg/L; and total phosphorous 0.16 mg/L.

47. Schedule A.9 of the 2017 Permit established the following statewide benchmarks applicable to Medford Fabrication: total copper 0.020 mg/L; total lead 0.015 mg/L; total zinc 0.12 mg/L; pH 5.5—8.5 S.U.; total suspended solids 100 mg/L; total oil and grease 10 mg/L; and e.coli 406 counts/100 mL.

48. Additionally, Schedule E.AA.4 of the 2021 Permit establishes the following sector-specific benchmarks applicable to Medford Fabrication: total aluminum 1.10 mg/L; and Nitrate plus Nitrite Nitrogen 10 mg/L.

49. Medford Fabrication discharges to Bear Creek, which is not meeting water quality standards for the pollutant iron, and Schedule B.4 of the 2021 Permit therefore requires Medford Fabrication to monitor for iron and establishes an impairment benchmark for that pollutant of 10.0 mg/L.

50. As shown in Tables 1 and 2 at pages 5–7 of the attached Notice Letter, Medford Fabrication has repeatedly, and often significantly, discharged the pollutants aluminum, copper, iron, nitrogen, TSS, and zinc in excess of the benchmarks established by the Permits. These many benchmark exceedances have been documented by Medford Fabrication itself at Outfalls 001, 002, 003, 004, 005, and 006 at the Facility.

51. Medford Fabrication's long history and pattern of repeated benchmark exceedances indicate that it has violated, and continues to violate, the narrative technology-based effluent limits in Schedules A.1 and E.A.A.1 of the Permits, and

has failed to select, design, install, implement, and maintain control measures necessary to meet those benchmarks, in violation of Schedule A.2.a of the 2021 Permit and Schedule A.3.a of the 2017 Permit.

52. These violations have occurred each and every day since January 1, 2019 and are ongoing.

53. Additionally, the history and pattern of significant benchmark exceedances demonstrate that Medford Fabrication's site controls are not effectively minimizing pollutants in stormwater discharged from the Facility, and are not reducing or eliminating pollutants to the extent achievable, in violation of Schedule A.2.b of the 2021 Permit and Schedule A.3.b of the 2017 Permit.

54. These violations have occurred each and every day since January 1, 2019 on which there was 0.1 inch or more of precipitation because, on information and belief, on those days Medford Fabrication discharged pollutants in stormwater from the Facility and had not reduced or eliminated those pollutants to the extent achievable.

SECOND CLAIM FOR RELIEF

Violations of the Permit's Requirements regarding Stormwater Pollution Control Plans (SWPCPs)

55. The allegations of each preceding paragraph are incorporated herein as if restated in full.

56. Schedule A.2.a of the 2021 Permit and Schedule A.3.a of the 2017 Permit require Medford Fabrication to describe its pollutant control measures, maintenance schedules, and the frequency of housekeeping measures in its SWPCP.

57. Schedule A.8.c of the 2021 Permit and Schedule A.6.a of the 2017 Permit require Medford Fabrication to include in its SWPCP each narrative technology based effluent limit to eliminate or reduce the potential to contaminate stormwater and prevent any violation of instream water quality standards.

58. Schedule A.10 of the 2021 Permit and Schedule A.7 of the 2017 Permit set forth the requirements for SWPCPs, including in Schedule A.10.b.vi of the 2021 Permit and Schedule A.7.b.vi of the 2017 Permit the requirement that SWPCPs include a description of control measures installed and implemented to meet the technology and water quality based requirements in Schedules A.1-A.4 and any applicable sector-specific requirements in Schedule E.

59. Schedule A.8.d of the 2021 Permit and Schedule A.6.d of the 2017 Permit require Medford Fabrication to implement the SWPCP and any revisions to it.

60. Medford Fabrication violated Schedules A.2.a, A.8.c, A.10, and A.8.d of the 2021 Permit and Schedules A.3.a, A.6.c, A.7, and A.6.d of the 2017 Permit each and every day since January 1, 2019 by failing to maintain and implement an adequate SWPCP at the Facility.

61. The extensive benchmark exceedances documented in the Notice Letter at Tables 1 and 2, the extensive water quality violations described herein, and ongoing discharges of polluted industrial stormwater from the Facility demonstrate that Medford Fabrication is not maintaining or implementing a

SWPCP that includes adequate control measures and all of the required SWPCP components.

62. On each day since January 1, 2019, Medford Fabrication has operated with an inadequate SWPCP. Each such day of operation is a separate violation of Schedules A.2.a, A.8.c, A.10, and A.8.d of the 2021 Permit and Schedules A.3.a, A.6.c, A.7, and A.6.d of the 2017 Permit, as applicable. These violations are ongoing.

THIRD CLAIM FOR RELIEF

Discharges in Violation of Water Quality Standards

63. The allegations of each preceding paragraph are incorporated herein as if restated in full.

64. Schedules A.3 and F.A6 of the 2021 Permit and Schedules A.4.a and F.A6 of the 2017 Permit prohibit Medford Fabrication from discharging pollutants and stormwater associated with industrial activity in an amount or manner that causes or contributes to violations of the instream water quality standards established in Oregon Administrative Rule (“OAR”) 340-041 for Bear Creek.

65. Schedules A.3.a of the 2021 Permit and Schedules A.4.a of the 2017 Permit prohibit Medford Fabrication from causing or contributing to a violation of instream water quality standards as established in OAR 340-041.

66. Schedules F.A6 of the Permits require Medford Fabrication to comply with any applicable effluent standards or prohibitions established under OAR 340-041-0033 for toxic pollutants.

67. OAR 340-041-007(1) states that “the highest and best practicable treatment and/or control of wastes, activities, and flows must in every case be provided so as to maintain...toxic materials...at the lowest possible levels.”

68. OAR 340-041-0033(1) prohibits the introduction of toxic substances above natural background levels in concentrations and/or combinations that may be harmful to public health, safety, aquatic life, and wildlife.

69. OAR 340-041-0033(2) states that levels of toxic substances in waters of the state may not exceed the applicable aquatic life criteria as defined in Table 30 under OAR 340-041-0083.

70. The Permits established benchmark concentrations for the impairment pollutant iron based on these water quality standards, and also used these water quality standards to establish benchmark concentrations for other toxic pollutants including copper, zinc, and aluminum. Table 30 in OAR 340-041-8033 identifies the concentrations of toxic pollutants that may be harmful to aquatic life.

71. In its 2021 permit assignment letter to Medford Fabrication, DEQ incorporated the iron criterion in Table 30 into the Permit as the impairment benchmark concentration for iron, and in the 2017 and 2021 permits used the copper, zinc, and aluminum criteria to establish benchmarks for those pollutants.

72. Medford Fabrication has violated and continues to violate Schedules A.3.a and F.A6 of the 2021 Permit, and violated Sch. A.4.a and F.A6 of the 2017 Permit, by discharging toxic pollutants from the Facility in amounts or manners

that cause or contribute to violations of the narrative and numeric water quality standards identified above.

73. As indicated in Tables 1 and 2 of the Notice Letter, discharges from the Facility routinely contain iron in concentrations that cause or contribute to violations of the numeric water quality standard for iron applicable to Bear Creek, identified in the 2021 Permit as 10.0 mg/L. Medford Fabrication violated Schedule A.3.a and F.A6 on each occasion since January 1, 2019 where its stormwater discharge contained concentrations of total iron above 10.0 mg/L, including but not limited to: February 14, 2019; October 16, 2019; December 7, 2019; March 24, 2020; November 1, 2021; March 15, 2022; April 21, 2022; December 27, 2022; March 14, 2023; and May 8, 2023. These violations are ongoing.

74. Further, Medford Fabrication has violated and continues to violate Schedule F.A6 of the Permits by introducing iron, copper, zinc, and aluminum above natural background levels in concentrations that may be harmful to public health, safety, aquatic life, and wildlife (OAR 340-041-0033(1)). These violations have occurred each and every day since January 1, 2019 on which there was 0.1 inch or more of precipitation at the Facility because, on information and belief, on those days Medford Fabrication discharged industrial stormwater from the Facility that contained copper, zinc, iron, and/or aluminum in excess of the benchmarks or reference concentration for those pollutants established in the Permits. These violations are ongoing.

75. Medford Fabrication has violated and continues to violate Schedule F.A6 by failing to provide the highest and best practicable treatment and/or control of wastes, activities, and flows so as to maintain the lowest possible levels of toxic pollutants. As indicated in Tables 1 and 2 of the Notice Letter, discharges from the Facility regularly contain elevated concentrations of the toxic pollutants copper, zinc, iron, and aluminum, indicating that Medford Fabrication is not providing the highest and best practical treatments and controls at the Facility to maintain the lowest possible levels of toxic pollutants. These violations have occurred each and every day since January 1, 2019 on which there was 0.1 inch or more of precipitation at the Facility because, on information and belief, on those days Medford Fabrication discharged industrial stormwater from the Facility that contained copper, zinc, iron, and/or aluminum in excess of the benchmarks for those pollutants established in the Permits. These violations are ongoing.

FOURTH CLAIM FOR RELIEF

Violations of the Permit's Requirements to Take Corrective Actions and Related Reporting Requirements.

76. The allegations of each preceding paragraph are incorporated herein as if restated in full.

77. Schedule A.11 of the 2021 Permit and Schedule A.10.a and B.7.f.vi of the 2017 Permit require Medford Fabrication to undertake a Tier I corrective action response each time a stormwater monitoring result exceeds any statewide or sector-specific benchmark, or when visual observations show signs of pollution in the discharge.

78. Specifically, that permit condition requires Medford Fabrication, within 30 days of obtaining monitoring results demonstrating a benchmark exceedance or completing a monthly visual inspection showing signs of pollution in the discharge, to: (1) investigate the cause of the elevated pollutant levels and develop a plan for controlling significant materials from previous operations; (2) review the SWPCP and evaluate the selection, design, installation and implementation of control measures to ensure compliance with the permit, including evaluating whether any previous pollutant source isolation actions are complete and whether additional modifications are necessary; (3) evaluate treatment measures, infiltration devices and mass reduction measures to see if they were properly installed, maintained and implemented and whether maintenance, correction or modifications are necessary; and (4) assess and implement these corrective actions at all substantially similar discharge points.

79. As required by Schedule A.11.c.v of the 2021 Permit and Schedule A.10.a.iv of the 2017 Permit, a Tier I report must include (1) the results of Medford Fabrication's investigation into the cause of elevated pollutant levels; (2) corrective actions taken or to be taken, or, if determined that no corrective action is necessary, the basis for this determination; and (3) documentation of whether SWPCP revisions are necessary.

80. Schedule A.11.d.i of the 2021 Permit and Schedule A.10.b of the 2017 Permit requires Medford Fabrication to implement necessary corrective actions

before the next storm event, if possible, or no later than 30 days after receiving the monitoring results, whichever comes first.

81. Medford Fabrication has routinely violated Schedules A.11.c. and A.11.d of the 2021 Permit and Schedules A.10.a.iv and A.10.b of the 2017 Permit by either failing to complete a Tier I corrective action response, including a Tier I corrective action report, or by failing to perform an adequate corrective action response, including by submitting inadequate Tier I corrective action reports.

82. The history and pattern of ongoing and significant benchmark exceedances demonstrated in Tables 1 and 2 of the Notice Letter indicate that Medford Fabrication has repeatedly failed and is presently failing to (a) perform adequate investigations of the cause of benchmark exceedances; (b) perform a sufficient review of its SWPCP and evaluation of the selection, design, installation and implementation of its control measures; (c) evaluate the Facility's treatment measures and determine whether maintenance, correction, or modifications to those measures are necessary; and (d) implement adequate and necessary corrective actions before the next storm event or no later than 30 days after receiving the monitoring results.

83. These violations have occurred each and every day since January 1, 2019, and are ongoing.

84. Similarly, Schedule A.3.b of the 2021 Permit and Schedule A.4.b of the 2017 Permit require Medford Fabrication to take certain actions upon becoming aware that a discharge from the Facility caused or contributed to an exceedance of

water quality standards, including (1) investigating the conditions that triggered the violation; (2) reviewing the SWPCP to ensure compliance with the permit; (3) submitting a Water Quality Standards Corrective Action report to DEQ within thirty days of receiving the relevant monitoring data, which report must meet certain criteria stated in the Permits; and (4) implementing any required corrective actions before the next storm event or within thirty days after discovering the violation, whichever comes first.

85. Medford Fabrication has routinely caused or contributed to an exceedance of numeric and narrative water quality standards for several toxic pollutants as described above. On each of these instances, Medford Fabrication has violated Schedule A.3.b of the 2021 Permit and Schedule A.4.b of the 2017 Permit by failing to comply with the investigation, reporting, and corrective action requirements in those permit conditions.

86. Medford Fabrication violated these requirements each and every day since February 14, 2019 by failing to implement Tier I corrective action responses in the required time frame; failing to review the SWPCP to ensure compliance with the permit; failing to submit each and every required Water Quality Standards Corrective Action report to DEQ within thirty days of receiving the relevant monitoring data; and failing to implement required corrective actions before the next storm event or within thirty days after discovering the violation, whichever comes first. These violations remain ongoing.

87. Finally, Medford Fabrication violated Schedules F.D6 of the Permits each and every day since January 1, 2019 by failing to report its noncompliance with the Permits, as required by those permit conditions.

88. Schedules F.D6 of the Permits require Medford Fabrication to report all instances of noncompliance with the permit not reported under General Condition D4 or D5 at the time Medford Fabrication submits monitoring reports. Each noncompliance report must include: (1) a description of the noncompliance and its cause; (2) the period of noncompliance, including exact dates and times; (3) the estimated time the noncompliance is expected to continue if it has not been corrected; and (4) the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

89. As alleged herein, Medford Fabrication has violated the Permits each and every day since January 1, 2019. Medford Fabrication violated Schedules F.D6 of the Permits each and every day since January 1, 2019 by failing to prepare and submit noncompliance reports that fully and accurately identify Medford Fabrication's noncompliance with the Permits and that include all the required information. These violations remain ongoing.

FIFTH CLAIM FOR RELIEF

Violations of General Permit Conditions

90. The allegations of each preceding paragraph are incorporated herein as if restated in full.

91. Each and every Permit violation alleged above is also a violation of Schedule F.A1 of the Permits, which requires Medford Fabrication to comply with all conditions of its Permits.

92. Additionally, each and every Permit violation alleged above is a violation of Schedule F.A3 of the Permits, which requires Medford Fabrication to take all reasonable steps to minimize or prevent any discharge in violation of the Permits.

93. Medford Fabrication violated Schedules F.A1 and F.A3 each and every day since January 1, 2019 by violating the Permits and by failing to take reasonable steps to minimize or prevent discharges in violation of the Permits.

94. Further, each and every Permit violation alleged above is also a violation of Schedule F.B1 of the Permits, which requires Medford Fabrication to “at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions” of the Permits.

95. Medford Fabrication violated these permit conditions each and every day since January 1, 2019 by failing to properly operate and maintain all systems of treatment and control, including Medford Fabrication’s SWPCP, to achieve compliance with the Permits.

REQUEST FOR RELIEF

NEDC requests the Court grant the following relief:

1. Assess a civil penalty against Medford Fabrication in the amount of \$59,973 per day for each Permit violation, as authorized by 33 U.S.C. §§ 1365, 1319 and 40 CFR § 19.4;
2. Enjoin Medford Fabrication's ongoing violations of the 2021 Permit and the Clean Water Act;
3. Declare that Medford Fabrication's violations of the Permits were and are unlawful under the Clean Water Act;
4. Award NEDC its costs of litigation, including its reasonable attorney and expert witness fees, as authorized by 33 U.S.C. § 1365(a) and (d); and
5. Grant NEDC such further relief as the Court may deem appropriate.

Dated: July 29, 2024.

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